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Background

Overview

- Kazakhstan is Central Asia's largest state by size and economic output. And this week it was center stage as the US-Kazakhstan Trade and Investment Forum kicked off.
- Marat Beketayev, the country's Minister of Justice, spoke at the event on Tuesday.
- Kazakhstan turns thirty years old this year. At the beginning of its independence in 1991, Kazakhstan had a GDP per capita of roughly \$700 U.S. Dollars.
- Today that figure is roughly \$9800. Kazakhstan's economy is TWICE the size of all other Central Asian countries combined.
- American companies like Chevron, John Deere, GE and scores of others have been operating in Kazakhstan.
- Why? A major factor has been the hard work it has led to establish a strong market-based economy and continue to build and improve institutions and policies that attract business enterprises to invest.

International Treaties

- Kazakhstan is a party to more than 200 multilateral treaties and agreements addressing trade, taxation, dispute resolution, labor relations, and intellectual property protection, among others.
- We joined the World Bank's International Centre for Settlement of Investment Disputes in 1992, and the New York Convention on the Enforcement of Arbitral Awards in 1995. After 20 years of negotiations, Kazakhstan was admitted to membership in the World Trade Organization in 2015.

Astana International Financial Centre

- The AIFC offers investors the option of a separate and independent legal and regulatory framework within which to operate, based on English common law – including its own trial and appellate courts staffed by British judges.
- Arbitration and mediation are also available through the Centre, and awards are enforceable in Kazakh courts and internationally. Already, 296 cases have been resolved in the AIFC courts, along with 438 cases resolved in AIFC arbitration or mediation.

Judicial Reforms

- Kazakhstan has adopted numerous fundamental reforms to its judicial and legal systems aimed at guaranteeing independent and qualified judges; ensuring the rule of law; increasing accessibility of the courts; and bringing Kazakhstan's courts into line with international standards.
- In 2016, Kazakhstan reformed its laws governing arbitration, bringing them more fully into line with the New York Convention and other international arbitration standards. The new laws clarify that Kazakh courts may review only procedural aspects of arbitrations, and may not second-guess the arbitrator's decision on the merits.

Arbitrations

- First of all, arbitration claims against Kazakhstan are very low compared to the amount of Foreign Direct Investment it has received. From 1993 to 2020, Kazakhstan had inflows of roughly \$350 Billion of FDI. During that same period the total sought by some investors through arbitration claims against Kazakhstan amounted to \$22.3 Billion.
- Kazakhstan was able to defend its position in most of the cases before independent arbitrators. Where the arbitrators found for the investors, Kazakhstan respectfully complied with the awards. As of today, the amount that was awarded and settled equals to \$308 million.
- Kazakhstan joined the World Bank's International Centre for Settlement of Investment Disputes in 1992, and since that time, it has been involved in 23 total and 19 reported investor-state arbitration cases. To put this into

perspective, within the same timeframe, the United States has been involved in 20 cases; Canada – 31; and Spain – 53.

- While there are four cases ongoing, here are some statistics on the 19 reported cases. Of those cases: Kazakhstan won ten of the cases with the claims being dismissed in their entirety. It settled two of the cases before a determination was made, and investors prevailed in seven of those cases. With one exception, Kazakhstan either promptly paid the award or settled during or following the appellate process.
- Both the World Bank and the ICSID have described these statistics as balanced and in line with expectations. They reinforce the fact that Kazakhstan is an excellent place to make significant capital investments, and that the Republic is a reliable investment partner.
- In the past 30 years, there has only been one case that Kazakhstan has lost and has continued to challenge post-arbitral award. That is because Kazakhstan believed, and now has concrete evidence, that this arbitration award was procured by fraudulent financial data supplied to third-party auditors.
- Those auditors have since rescinded their audit reports and notified all parties that no reliance should be placed on them. Kazakhstan looks forward to having its claims relating to the fraud addressed by reliable judicial systems and will continue to look to the rule of law as its guiding principle in all such situations.